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Supreme Court of the United States

OCTOBER TERM, 1954

No. 173

AMALGAMATED CLOTHING WORKERS OF AMERICA AND CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA, PETITIONERS,

vs.

THE RIC[illegible]AN BROTHERS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 28, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 173

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vs.

THE RICHMAN BROTHERS COMPANY

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INDEX

	Original	Print
Proceedings in U.S.C.A. for the Sixth Circuit	1	1
Appendix to appellant's brief	1	1
Docket entries (omitted in printing)	1	
Defendants' Exhibit No. 7—Petition for injunction, filed in Court of Common Pleas of Cuyahoga County, Ohio	2	1
Annexed interrogatories propounded by plaintiff	13	10
Motion of plaintiff for temporary injunction and notice thereof (omitted in printing)	15	
Answer, Court of Common Pleas	17	11
Defendants' Exhibit No. 6A—Motion to dismiss and notice thereof, Court of Common Pleas	23	15
Briefs in support of and opposition to motion (omitted in printing)	25	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 30, 1954

		Original	Print
Appendix to appellant's brief—Continued			
Defendants' Exhibit No. 8—Order denying motion to dismiss, Court of Common Pleas		123	16
Complaint filed in U.S.D.C.		124	16
Defendants' Exhibit No. 9—Opinion, McNamee, J., U.S.D.C.		131	22
Defendants' Exhibit No. 10—Order denying application for a stay of proceedings, U. S. D. C.		134	24
Findings of fact and conclusions of law in connection with the Court's order denying motion for preliminary injunction, U.S.D.C.		135	25
Order denying motion of plaintiffs for preliminary injunction, U.S.D.C.		139	27
Appendix to appellee's brief	(omitted in printing)	141	
Argument and submission	(omitted in printing)	150	
Judgment		150	28
Opinion, Simons, J.		153	29
Clerk's certificate	(omitted in printing)	160	
Order granting certiorari		162	36

[fols. 1-2] **IN UNITED STATES DISTRICT COURT**

DEFENDANT'S EXHIBIT No. 7

PETITION FOR INJUNCTION AND EQUITABLE RELIEF

IN THE COURT OF COMMON PLEAS

No. 641936

STATE OF OHIO,
County of Cuyahoga, ss:

THE RICHMAN BROTHERS COMPANY, a corporation, 1600 East 55th Street, Cleveland, Ohio, Plaintiff,

vs.

AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association,

CLEVELAND JOINT BOARD OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

LOCAL No. 112 OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

LOCAL No. 162 OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

LOCAL No. 168 OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

LOCAL No. 188 OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

BERYL PEPPERCORN, individually and as Manager and a member of Cleveland Joint Board of Amalgamated Clothing Workers of America, and as an agent and a member of Amalgamated Clothing Workers of America and of one of the Locals, No. 112, No. 162, No. 168 and No. 188, of Amalgamated Clothing Workers of America, 2511 Laurelhurst Drive, University Heights, Ohio,

JACK KROLL, individually and as a Vice President and a member of Amalgamated Clothing Workers of America,

and as a member of the General Executive Board of Amalgamated Clothing Workers of America, Vernon Mannor Hotel, Cincinnati, Ohio,

[fol. 3] Henry T. Becker, individually and as an agent and member of Amalgamated Clothing Workers of America, 1928 East 90th Street, Cleveland, Ohio,

Frank Varanese, individually and as a business agent of Cleveland Joint Board of Amalgamated Clothing Workers of America and as an agent and a member of Amalgamated Clothing Workers of America, and of one of the Locals, No. 112, No. 162, No. 168 and No. 188, of Amalgamated Clothing Workers of America, 3662 West 47th Place, Cleveland, Ohio,

Max Amdur, individualy and as a business agent of Cleveland Joint Board of Amalgamated Clothing Workers of America, and as an agent and a member of Amalgamated Clothing Workers of America, and of one of the Locals, No. 112, No. 162, No. 168 and No. 188, of Amalgamated Clothing Workers of America, 3311 Clarendon Road, Cleveland Heights, Ohio,

Joe Kynkor, individualy and as a business agent of Cleveland Joint Board of Amalgamated Clothing Workers of America, and as an agent and a member of Amalgamated Clothing Workers of America, and of one of the Locals, No. 112, No. 162, No. 168 and No. 188, of Amalgamated Clothing Workers of America, 1870 East 75th Street, Apartment 407, Cleveland, Ohio,

Richard Roe, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America,

John Doe, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America,

Frank Roe, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America,

Charles Doe, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing

Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America,

and

ROBERT ROE, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America, Defendants

[fol. 4] First Cause of Action

1. Plaintiff The Richman Brothers Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio. It is and for many years has been engaged in the business of making and selling men's clothing and of buying and selling other articles of men's wear, which is a highly competitive business. Its main factory and its principal office and place of business are located at 1600 East 55th Street, Cleveland, Ohio. Its only other factory is located at Sturgis, Kentucky. Except for odd trousers made at its factory in Sturgis, Kentucky, all clothing made by plaintiff is made at its factory in Cleveland, Ohio.

2. Plaintiff now owns and operates 69 stores, only 5 of which were started since January 1, 1951. In such stores plaintiff sells at retail clothing made by it and other articles of men's wear which it buys at wholesale from various suppliers. Of plaintiff's stores, 3 are in Cleveland, 15 are in fourteen other cities in Ohio and 51 are in thirty-one cities in fifteen other states in the United States.

3. In excess of ninety percentum of plaintiff's gross sales of clothing made by plaintiff is comprised of sales at plaintiff's retail stores. Less than one percentum consists of custom made, factory and mail order sales. The balance consists of sales by plaintiff made at wholesale to certain other retailers. Approximately eighty percentum of plaintiff's gross sales from its stores is comprised solely of clothing made by plaintiff and the balance is comprised of sales of other articles of men's wear purchased by plaintiff at wholesale from the various suppliers thereof.

[fol. 5] 4. Exclusive of its executive, supervisory and office personnel, plaintiff employs approximately 2424 per-

sons. Of such employees, about 1398 are employed in its factory in Cleveland, Ohio; about 76 are employed in its factory in Sturgis, Kentucky; and about 950 are employed in its 69 stores. Of such employees in plaintiff's stores, approximately 74 are employed in its 3 stores in Cleveland, Ohio, there being about 52 such employees in its stores at 736 Euclid Avenue, about 16 such employees in its store at 2097 Ontario Street, and about 6 such employees in its store at 5716 Broadway Avenue.

5. Plaintiff's factory in Cleveland, Ohio, is more than two miles from its nearest store. Plaintiff has no store in or near Sturgis, Kentucky.

6. The defendant Amalgamated Clothing Workers of America, hereinafter sometimes referred to as "Amalgamated", is a labor organization. It is affiliated with the Congress of Industrial Organizations. It is an unincorporated association of such of the workers in, and others identified with, the clothing industry as are members of it. Its members are very numerous and it is impracticable to bring them all before the Court. It operates within the State of Ohio and in most, if not all, of the states and in all of the larger cities of the United States, in which clothing is manufactured. Its operations are substantially nation-wide. It claims a membership of about 380,000 persons.

7. The supreme governing body of the Amalgamated is its General Executive Board which is comprised of certain individuals as members thereof, including the principal officers of Amalgamated. Under authority of Amalgamated, there are many local labor organizations in various places in various states of the United States, herein referred to as "Locals", which are local labor union affiliates of Amal- [fol. 6] gamated. Also under authority of Amalgamated, there exists in each of various localities in the United States, a local governing body of Amalgamated, which is known as a Joint Board of a particular area or locality. Each such Joint Board is comprised of representatives from the Locals of Amalgamated, which operate within the area which such Joint Board has jurisdiction. Each such Joint Board is the principal local governing Body for the Locals within the area of its jurisdiction as respects all

matters which are of joint or common concern of such locals. Each such Local and each such Joint Board are under the jurisdiction of, and subject to substantial control by, Amalgamated. Each of such Locals and Joint Boards and their respective members, all of whom are members of Amalgamated, are a part of and are agencies of Amalgamated and are employed and directed by Amalgamated in the carrying out of its course of conduct with respect to plaintiff, which is subsequently herein complained of.

8. The defendant Cleveland Joint Board of Amalgamated Clothing Workers of America, hereinafter sometimes referred to as Cleveland Joint Board, is one of the Joint Boards, above referred to, of the defendant Amalgamated and is a branch through which the defendant Amalgamated operates in the district comprised, in part, of the Cleveland, Ohio area. The Cleveland Joint Board is an unincorporated association. It is a labor organization comprised of representatives from the Locals of Amalgamated which operate in the area over which such Joint Board has jurisdiction. Its members are very numerous and it is impracticable to bring them all before the Court.

9. Each of the defendants, Local No. 112, Local No. 162, Local No. 168 and Local No. 188, all of Amalgamated, is a [fol. 7] Local and an affiliate of defendant Amalgamated, located and operating within the State of Ohio, in the Cleveland, Ohio area, is a labor organization and is an unincorporated association whose members are very numerous and it is impracticable to bring them all before the Court. All members of each of said Locals in this paragraph referred to are members of the defendant Amalgamated and are subject to the jurisdiction, policies and control of defendant Amalgamated.

10. Defendant Jack Kroll is a Vice President and a member of defendant Amalgamated and he is a member of the General Executive Board of defendant Amalgamated. The defendant Henry T. Becker is a National Representative and a member of defendant Amalgamated and is one of the principal agents of defendant Amalgamated with respect to directing such of the activities against plaintiff in the Cleveland, Ohio area as are subsequently herein complained of. The defendant Beryl Peppercorn is a member, and is the manager and as such is the chief officer, of the defend-

ant Cleveland Joint Board of defendant Amalgamated. Each of the defendants Frank Varanese, Max Audur and Joe Kynkor is a business agent of the defendant Amalgamated or of its Cleveland Joint Board. Each of the four individual defendants last named in this paragraph is a member and an agent of the defendant Locals named in the caption of this petition.

11. Plaintiff is ignorant of, and has been unable to ascertain, the true name of any of the defendants who are designated herein by the fictitious names of Richard Roe, John Doe, Frank Roe, Charles Doe and Robert Roe, respectively. Each of such defendants last referred to is an employee and agent of defendant Amalgamated or of defendant Cleveland Joint Board, or of one or more of the defendant Locals [fol. 8] Nos. 112, 162, 168 and 188 of Amalgamated, and is a picket at one of plaintiff's stores in Cleveland, Ohio.

12. Neither the defendant Amalgamated nor any other labor organization or person is the representative, for purposes of collective bargaining with plaintiff, of those of plaintiff's employees at its factories and/or its stores, who are eligible for any such representation by defendant Amalgamated. No notice has been given to plaintiff that defendant Amalgamated, or any other labor organization or person, claims to be such representative or to be entitled to be recognized or dealt with as such by plaintiff.

13. There is not now, and there has not been at any time subsequently herein referred to, any strike of any of plaintiff's employees or any labor dispute between plaintiff and any of its employees.

14. Commencing on March 31, 1951, and continuously since that time, defendant Amalgamated, its several joint Boards and Locals together with its officers, agents and members, both as such and as individuals, have been and continue to be engaged, and the defendants are now engaged, in carrying forward a conspiracy to cause economic pressure to be directed against plaintiff with the intention and for the purpose and objective of thereby causing plaintiff to force sufficient of its eligible employees to become members of defendant Amalgamated, so that defendant Amalgamated may become the representative of its such employees for the purposes of collective bargaining with plaintiff, regardless of the desires of a majority thereof.

15. The conspiracy aforesaid has been and is being carried forward, as it unless restrained by order of this Court, [fol. 9] will continue to be carried forward by causing economic pressure to be directed against plaintiff by the methods and means as follows:

(a) Commencing on March 31, 1951 and continuing since that time, the defendants and others referred to in the above paragraph 14 hereof, have caused and are causing various of plaintiff's stores, including the greater number thereof and the three Cleveland stores, to be picketed almost continuously during business hours. Such picketing is being and has been carried on generally by one or two, in some instance by several, in other instances by many, pickets at each picketed store. None of such pickets is an employee of plaintiff. Each such picket while on duty parades to and fro immediately in front of the main entrance to the picketed store and carries and displays one or two large banners bearing in large, highly colored letters one or more printed inscriptions over, or in association with, the name of the defendant Amalgamated. The inscriptions which are most frequently so displayed are of the following report:

Richman Bros. clothes are not union made. Buy union made clothes.

Richman Bros. clothes do not have a union label. Buy clothes which have a union label.

(b) From time to time since March 31, 1952, the defendants and others referred to in the above paragraph 14 hereof have caused, and continue to cause, in addition to the picketing referred to in the above subparagraph 15 (a), special sporadic picketing demonstrations to be made immediately in front of certain of plaintiff's stores in certain of the larger cities, including Cleveland, Ohio. On such occasions as many as 15 to [fol. 10] 20, and in some instances more persons, at times singing and shouting, mill about in a closely formed group to and fro in front of the main entrance of the picketed store during a substantial portion of the store's business hours on a particular day or evening.

None of such pickets is an employee of plaintiff. Such pickets carry banners, signs on long poles and inflated balloons on long cords, bearing printed inscriptions of substantially the same import as those above described in subparagraph 15 (a) hereof. On such occasions, at times, some of the pickets carry signs bearing printed inscriptions of the import that certain labor organizations, other than the defendant Amalgamated and its Joint Boards and Locals, are participating in the picketing and cooperating with defendants in their picketing campaign against plaintiff's retail selling business. On such occasions, the pickets, by their conduct and with the aid of their long poles and cords, create confusion in front of the picketed stores and so block the entrance to the picketed store as to divert much of the pedestrian traffic on the sidewalk outwardly from the entrance.

16. The picketing of stores of plaintiff has been and is being carried on with full knowledge on the part of defendants that there is a belief commonly accepted, entertained and acted upon by persons comprising a substantial part of the general public that no person without permission of the picketing union may rightfully cross a picket line maintained by it at an employer's place of business, or enter any such picketed place for the purpose of having business relations with such employer.

17. As a direct and proximate result of the carrying forward of said conspiracy by the picketing of stores of plain-[fol. 11] tiff with the intention and for the purpose and objective aforesaid, plaintiff, since March 31, 1951, has been, and continues to be, damaged in its business. Such picketing has excluded and continues to exclude prospective customers from the picketed stores, has decreased and continues to decrease plaintiff's sales and consequently plaintiff's production. The number of prospective customers which have been so excluded from plaintiff's picketed stores, the amounts by which plaintiff's sales and production have been so decreased, and the amount of such damages which have been so sustained by plaintiff are necessarily speculative and not readily ascertainable or provable. As a result of such picketing, plaintiff has sustained, and unless such picketing shall be enjoined, plaintiff will continue to sustain

irreparable damages. Plaintiff has no adequate remedy at law.

18. Plaintiff is ignorant with respect to, has been unable to obtain and, except through the use of interrogatories hereunto annexed, has no means of ascertaining: (a) the true name of any of the defendants who have been herein designated by the fictitious names Richard Roe, John Doe, Frank Roe, Charles Doe and Robert Roe, respectively, and (b) the name or the residence or other address or place of whereabouts of any of the officers of any of the defendants, Local No. 112, Local No. 162, Local No. 168 and Local No. 188, each being a local of and affiliated with defendant Amalgamated. The true name of each of the six individuals herein designated by a fictitious name and the name, residence address and office held in any such Local, of each of the officers of each of said four Locals previously in this paragraph referred to, are material to the cause of action herein set forth and are within the knowledge of defendant Beryl Peppercorn, individually or as an officer or member of defendant Cleveland Joint Board of defendant Amalgamated, [fol. 12] to whom the interrogatories hereunto annexed are directed for being severally answered by him.

Second Cause of Action

19. Plaintiff incorporates herein by reference and adopts the same as if fully herein rewritten, all averments set forth in each of the foregoing paragraphs numbered 1 through 18 of the above stated First Cause of Action.

20. The conspiracy herein complained of and carried forward as aforesaid is, and at all times since March 31, 1951 has been, a continuing unreasonable restraint of trade in the State of Ohio. It is continuing to be effectuated by those referred to in the above paragraph 14 hereof, acting in combination and concert, with the intention, for the purpose and with the effect of injuring plaintiff in its business, restraining plaintiff in its sales of clothing at its stores in Ohio, restraining plaintiff, through a lessening of its sales, in its production of clothing in Ohio, and restraining plaintiff, through a lessening of its sales, in its shipments of clothing and other related commodities in Ohio, all of which is in violation of the applicable statutes, commonly known as the Valentine Act, and common law of the State of Ohio.

Wherefore, plaintiff prays:

A. That there be issued forthwith a temporary restraining order, pending further order of the Court, restraining the defendants and the respective branches, locals, officers, members and agents of each of the defendant associations and their agents, and all persons to whom knowledge of such order shall come from picketing and from doing any act to cause or to encourage any picketing, of any of plaintiff's stores;

[fol. 13] B. That upon final hearing hereof, there be issued a permanent injunction enjoining those referred to in the above paragraph A in the respects therein described;

C. That plaintiff be granted all such other and further relief as shall be just and proper;

D. That the defendant Beryl Peppercorn, individually or as an officer or member of defendant Cleveland Joint Board of defendant Amalgamated, answer the interrogatories annexed to this petition; and

E. That the defendants and each of them be ordered to pay the costs herein of plaintiff.

JDC & R. Jones, Day, Cockley & Reavis, 1759 Union Commerce Building, Cleveland 14, Ohio, MAin 1-5800, Attorneys for Plaintiff.

ANNEXED INTERROGATORIES PROPOUNDED BY PLAINTIFF

The following interrogatories, propounded by plaintiff, are annexed to the foregoing petition and are directed to, and to be severally answered by, the defendant Beryl Peppercorn individually or as an officer or member of defendant Cleveland Joint Board of Amalgamated Clothing Workers of America, as prayed for in the petition:

Interrogatory 1

What is the true name and residence address of each [fols. 14-15] of the persons engaged during some business hours in carrying banners bearing the name, all in part, of the defendant Amalgamated Clothing Workers of America, in front of:

(a) Plaintiff's store at 736 Euclid Avenue, Cleveland, Ohio?

(b) Plaintiff's store at 2697 Ontario Street, Cleveland, Ohio?

(c) Plaintiff's store at 5716 Broadway Avenue, Cleveland, Ohio?

Interrogatory 2

What is the name and residence address of and the name of the office held by, each of the persons who are the officers of:

(a) Defendant Local No. 112 of Amalgamated Clothing Workers of America?

(b) Defendant Local No. 162 of Amalgamated Clothing Workers of America?

(c) Defendant Local No. 168 of Amalgamated Clothing Workers of America?

(d) Defendant Local No. 188 of Amalgamated Clothing Workers of America?

The Richman Brothers Company, (S.) by ——— ———, Its President.

[fol. 16] ANSWER OF AMALGAMATED

(This is the answer filed in the Ohio Court of Common Pleas, County of Cuyahoga, proceeding. It was originally filed in the United States District Court after the proceeding had been removed to that Court.)

[fol. 17] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

No. 29671

[Title omitted]

ANSWER—Filed November 14, 1952 in United States District Court

Answer to First Cause of Action

Now come the defendants, and for Answer to the First Cause of Action:

1. Admit on information and belief the allegations contained in Paragraph 1 except that defendants, for want of

knowledge, deny the allegations therein contained that plaintiff's only other factory is located at Sturgis, Kentucky, and that all clothing, excepting odd trousers made at Sturgis, Kentucky, is made at its factory in Cleveland, Ohio.

2. Admit on information and belief the allegations contained in Paragraph 2 except that defendants, for want of knowledge, deny the allegations therein contained that only five of plaintiff's stores have been started since January 1, 1951, and that plaintiff sells at its stores articles of men's wear which it buys at wholesale from various suppliers.

3. For want of knowledge, deny the allegations contained in Paragraphs 3 to 5, inclusive, except that defendants admit the allegations contained in Paragraph 3 that in excess of ninety percentum of plaintiff's gross sales of clothing made by plaintiff is comprised of sales at plaintiff's retail stores.

4. Admit the allegations contained in paragraph 6 that defendant Amalgamated Clothing Workers of America is an unincorporated association, affiliated with the Congress of Industrial Organizations, of such of the workers in, and others identified with the clothing industry, as are members of it and defendants deny all of the other allegations therein contained.

[fol. 18] 5. Deny the allegations contained in Paragraphs 7, 8, 9, 10, 11 and 13 to 18, inclusive, except that defendants admit the allegations contained in Paragraph 8 that the Cleveland Joint Board is an unincorporated association with numerous members and a labor organization, and the allegation contained in Paragraph 9 that Locals 112, 162, 168 and 188 are labor organizations with numerous members and unincorporated associations, and the allegation contained in Paragraph 10 that Jack Kroll is a vice-president and member of defendant Amalgamated and a member of its General Executive Board. By way of further answer to the allegations contained in Paragraph 15 defendants allege that plaintiff is and has been non-union in all of its manufacturing and retail operations; that since on or about March, 1951, defendants have been engaged in a campaign to organize employees of plaintiff; that in furtherance of said organizational campaign, defendants have from time to time since said date informed the consuming public

through the media or radio broadcasts, sound trucks, newspaper advertisements, meetings, leaflets and peaceful pickets, of the fact that plaintiff is non-union; that the picketing of which plaintiff complains has been peaceful and truthful; and that the signs carried by the pickets generally bore the following legends:

Richman Brothers Clothes are not union made.
Buy union made clothes.
Richman Brothers Clothes do not have a union label.
Buy clothes which have a union label.

6. Admit the allegations contained in Paragraph 12 except that defendants deny that defendant Amalgamated is not the representative of plaintiff's eligible employees for purposes of collective bargaining and, by way of further answer, defendants allege that persons employed by plaintiff have designated the Amalgamated Clothing Workers of America as their representative for purposes of collective bargaining with plaintiff.

Answer to Second Cause of Action

7. Now come the defendants, and for Answer to the Second Cause of Action incorporate all the matters set forth in their answer to the First Cause of Action and deny all the allegations set forth by the plaintiff in its Second Cause of Action.

[fol. 19] The defendants attach hereto Answers to the Interrogatories requested by the plaintiff.

Wherefore, defendants pray that application of the plaintiff for a temporary injunction be denied, that the petition of the plaintiff be dismissed and that plaintiff be ordered to pay the costs of this action.

(S.) Moses Krisloy, Union Commerce Bldg., Cleveland, Ohio. (S.) William J. Corrigan, Williamson Building, Cleveland, Ohio.

[fol. 20] *Answer to Interrogatories*

Answer to Interrogatory No. 1:

The names and addresses of the persons carrying banners at the three stores named in this interrogatory are as follows:

Nick Branibor, 9418 Union Ave.
Peter Denich, 715 Bolivar Road.
James Eckert, 1737 E. 19 Street.
Mirko Pocue, 547 Woodland Ave.
Frank Theus, 3516 Trowbridge Ave.

Answer to Interrogatory No. 2:

(a) Defendant Local No. 112:
Max Peppercorn, President, 2608 E. 153 Street.
Helen Psihauntas, Secretary, 1589 E. 55 Street.

(b) Defendant Local No. 162:
Frank Novak, President, 2810 Oak Park Ave.
Elizabeth Smolik, Secretary, 18001 Maple Heights Blvd.

(c) Defendant Local No. 168:
Mae Hendricks, President, 8906 Vineyard Ave.
Catherine Thomas, Secretary, 1808 Clover.

(d) Defendant Local No. 188:
Walter Kensicki, President, 17513 Mapleboro Road, Maple Heights, Ohio.
Stanley Woznicki, Secretary, 3867 E. 177 Street.

Certificate of service (omitted in printing.)

[fols. 21-22] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

DEFENDANTS' EXHIBIT NO. 6 A

Motion to Dismiss

In the Court of Common Pleas

[Title omitted]

No. 641,936

Now comes the defendants, and move this Honorable Court for an order dismissing the Petition of plaintiff herein and striking the said Petition from the files for the following reason:

That this court has no jurisdiction to hear or to determine the claim set forth in plaintiff's petition in that all of the labor conduct allegedly involved is within the field occupied by the Labor Management Relations Act of 1947 (29 U. S. C. A. Secs. 151 et seq.), (an Act of the United States Congress), and is preempted from and closed to State regulation.

This Motion to dismiss the Petition of plaintiff is limited to the ground herein set forth, lack of jurisdiction of this Court to hear and determine the merits thereof. Accordingly, this Motion is made without prejudice to the defend-[fols. 24-122] ants' right to move to dismiss the Petition for failing to state a cause of action.

Respectfully submitted, Moses Krislov, William J. Isaacson, Corrigan, McMahon & Corrigan, Attorneys for Defendants.

NOTICE

Plaintiff will take notice that the defendants have filed the foregoing Motion to Dismiss and that the same will be on for hearing at the convenience of the Court.

Moses Krislov, William J. Isaacson, Corrigan, McMahon & Corrigan, Attorneys for Defendants.

[fol. 123] In United States District Court

Defendants' Exhibit No. 8

Order of Connell, J., Denying Motion to Dismiss—March 12, 1953

Common Pleas Court, County of Cuyahoga, State of Ohio; Civ. Journal 329, p. 469

The within Motion to dismiss is considered as a Demurrer to the petition on the ground that this court has no jurisdiction of the subject of the action. Defendants' answer filed in the U. S. District Court on November 14, 1952 was filed with this court on March 11, 1953. The demurrer to this petition (so called Motion to Dismiss) is overruled. Plaintiff is given leave to reply or plead by March 28, 1953.

[fol. 124] In United States District Court

30096

Amalgamated Clothing Workers of America and Cleveland Joint Board of the Amalgamated Clothing Workers of America, Plaintiffs,

vs.

The Richman Brothers Company, Defendant

Complaint for Injunctive Relief—Filed March 16, 1953

Come now the plaintiffs and complain of defendant as follows:

1. This action arises under the National Labor Relations Act, as amended (29 USCA, Section 151, et seq.), an Act of Congress regulating interstate commerce (hereinafter referred to as the Act). The jurisdiction of this Court is invoked under Section 1337 of the Judicial Code, (28 USCA, Section 1337), which confers jurisdiction on the United States District Courts of any civil action or proceeding arising under any Act of Congress regulating commerce,

and under Section 1651 of the Judicial Code (28 USCA, Section 1651), which authorizes the United States District Courts to issue all writs necessary or appropriate in aid of their jurisdiction.

2. Plaintiff Amalgamated Clothing Workers of America is a voluntary unincorporated association and labor union of approximately 400,000 members employed in the men's clothing and allied industries throughout the United States and Canada with its principal office at 15 Union Square, New York, New York. Approximately 97% of all employees employed in the manufacture of men's clothing in the United States and Canada are members of Amalgamated. Plaintiff Cleveland Joint Board is a joint board of local unions affiliated with the Amalgamated Clothing Workers of America with its office and principal place of business at 2227 Payne Avenue, Cleveland, Ohio. Both plaintiffs are hereinafter referred to as the "Union".

[fol. 125] 3. Defendant, The Richman Brothers Company (herein referred to as "Richman"), is a corporation incorporated under the laws of Ohio and engaged in the manufacture, purchase and sale of men's clothing. It owns and operates two clothing factories in Ohio and Kentucky employing approximately 1,474 employees and approximately 69 stores located in 16 states, employing approximately 950 employees. In excess of 90% of Richman's gross sales of clothing is made through its 69 stores. Approximately 80% of the clothing sold by Richman's retail stores is manufactured by Richman. The operation by Richman of its business aforesaid affects commerce within the meaning of Sections 2(6) and (7) of the Act.

4. Richman, in the operation of its business as specified in Paragraph 3, is non-union.

5. Since on or about March 31, 1951, the Union has engaged in a campaign to organize employees of Richman and in a campaign to publicize the fact that Richman, among other employers, manufactures non-union clothing. In furtherance of these campaigns, the Union has from time to time informed the consuming public through the media of radio broadcasts, sound trucks, newspaper advertisements, meetings, leaflets and peaceful pickets of the fact that Richman is non-Union and requested the consuming public to

purchase union made clothing and not to purchase clothing made by non-union manufacturers, of which Richman is one. These activities have been and are taking place at the Richman factories, its retail stores and elsewhere. The signs carried by the pickets generally bear the following legends:

> "Richman Clothes are not union made. Buy union made clothing",

or

> "Richman Clothes do not have a union label. Buy clothes which have a union label."

The activities engaged in by the Union, including picketing, have been at all times and are, peaceful and truthful. [fol. 126] 6. On or about the 18th day of October, 1952, Richman, (as plaintiff therein), filed a suit in the Court of Common Pleas of Cuyahoga County, Ohio (Case #641936) against the Union and various of its affiliated local unions and agents. A copy of the summons and petition and other papers annexed thereto in said suit are annexed hereto as Exhibit I.

On or about the 14th day of November, 1952, the Union filed its Answer to said Petition, a copy of which is annexed hereto as Exhibit II.

By said suit, Richman seeks a temporary and permanent injunction enjoining the Union and its affiliated local unions from picketing and from doing any act to cause or encourage any picketing of any of Richman's stores. In said suit, Richman alleges in Paragraph 14 of its Petition as the gravamen of its application for an injunction that the Union, its affiliated local unions and officers, agents and members are engaged in "carrying forward a conspiracy to cause economic pressure to be directed against (Richman) with the intention and for the purpose and objective of thereby causing (Richman) to force sufficient number of its employees to become members of (the Union) so that (the Union) may become the representative of its such employees for the purpose of collective bargaining with (Richman) regardless of the desires of a majority thereof."

This allegation was denied in all its aspects by the Union in its Answer (Exhibit H). The true purpose of these picketing activities are specified in Paragraph 5 hereof.

7. The said picketing activities complained of by Richman affect commerce within the meaning of Sections 2 (6) and (7) of the Act.

8. The activities engaged in by the Union constitute the exercise of rights guaranteed by Section 7 of the Act (29 USCA, Section 157), and of the right of free speech guaranteed by the First and Fourteenth Amendments to the United States Constitution. Richman, by its State Court suit (specified in Paragraph 6 hereof), seeks to enjoin and [fol. 127] proscribe such rights and attempts to secure a decree which conflicts with and negates rights specifically guaranteed by the Act and the Constitution of the United States.

9. The activities complained of by Richman, as specified in Paragraphs 14 and 15 of its petition, if true, are activities in a field which Congress has preempted and closed to State regulation by the Act. Richman by its aforesaid suit seeks to enjoin activities in a field preempted by Congress and closed to State regulation, contrary to the United States Constitution, (Article VI, Sec. 2).

10. Alternatively, the activities complained of by Richman, as specified in Paragraphs 14 and 15 of petition, if true, charge an unfair labor practice within the meaning of the Act, 29 USCA 158 (b)(1). Richman, by its aforesaid suit, invades the exclusive jurisdiction of the National Labor Relations Board and, [to the extent provided in Sections 10(j) and 10(L) of the Act] of Federal District Courts to remedy unfair labor practices, contrary to the provisions of the Act, Article I, Section 8, and Article VI of the Constitution of the United States.

11. For the reasons set forth in Paragraphs 8, 9, and 10 hereof, and each of them, the Court of Common Pleas of Cuyahoga County is without jurisdiction to hear and determine the suit instituted by Richman.

12. (a) On the 28th day of January, 1953, the Union moved the Court of Common Pleas of Cuyahoga County, Ohio, for an order dismissing the suit commenced by Richman in said Court on the ground that the State Court was

without jurisdiction. The Union's motion to dismiss was denied by the Court of Common Pleas on the 12th day of March, 1953 and said court has thereby assumed jurisdiction over said suit.

13. Said assumption of jurisdiction is in derrogation of the underlying policies and express provisions of the Act, the Congressional objective of a uniform labor policy and the Constitution of the United States. Such unlawful invasion of the federal field would irreparably injure the Congressional objective expressly and carefully fashioned in legislative enactment.

[fol. 128] 14. Said assumption of jurisdiction by the Court of Common Pleas of Cuyahoga County constitutes a burden upon interstate commerce contrary to the Constitution of the United States.

15. Said assumption of jurisdiction subjects plaintiffs to oppressive and burdensome litigation before a forum without jurisdiction to pass upon the legality of the acts complained of by Richman.

16. Said assumption of jurisdiction threatens immediate destruction to the lawful objectives for which plaintiffs have vigorously struggled these many past years to achieve.

17. Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray:

1. That the Court issue an order directing defendant to appear and show cause why a preliminary injunction should not issue against defendant, its agents, servants, employees, attorneys and all persons acting in concert or participation with them:

(a) Requiring them to withdraw the action commenced in the Court of Common Pleas of Cuyahoga County, Ohio, entitled "The Richman Brothers Company vs. Amalgamated Clothing Workers of America, et al." (No. 641936);

(b) Enjoining and restraining them from taking any further steps in the action referred to in Prayer 1 (a), from instituting any further actions in said court or in any other State Court, the effect of which would be,

(i) to prevent or in any manner interfere with plaintiffs, their agents, servants, and employees in their rights to peacefully picket the premises of defendant

and by other means to organize the employees of Richman and to inform the public of the fact that Richman is non-union.

(ii) to deprive or attempt to deprive plaintiffs, their agents, servants and employees, of their rights to engage in concerted activities guaranteed plaintiffs by Section 7 of the Act, and the Constitution of the United States.

(iii) to charge a violation of Section 8 (b) of the National Labor Relations Act, (29 USCA, Sec. 158(b). [fol. 129] (iv) to in any manner interfere with, by-pass or frustrate the policies of Congress in preempting the field of activities engaged in by plaintiffs.

(v) to in any manner interfere with, by-pass or frustrate the provisions, and underlying policies of the National Labor Relations Act and jurisdiction of the National Labor Relations Board.

2. That upon return of said order, the Court issue a preliminary injunction enjoining and restraining defendant, its agents, servants, employees, attorneys and all other persons in active concert or participation with them, as set forth in Prayer 1 above.

3. That pending hearing and determination of the motion for a preliminary injunction, defendants, its agents, servants, employees and attorneys be stayed from taking any further steps in the action referred to by Prayer 1 (a) above.

4. That upon final hearing the Court issue a permanent injunction enjoining and restraining defendant, its agents, servants, employees and attorneys and all other persons in active concert or participation with them, as set forth in Prayer 1 above.

5. That the Court grant such other, further and equitable relief as may be just and proper in the premises.

Dated at Cleveland Ohio, this 16th day of March, 1953.

Amalgamated Clothing Workers of America, and Cleveland Joint Board of the Amalgamated Clothing Workers of America, by (S.) William J. Corrigan, Corrigan, McMahon & Corrigan, by (S.) Moses Krislov, William J. Isaacson, Attorneys for Plaintiffs.

[fol. 130] *Duly sworn to by Beryl Peppercorn. Jurat omitted in printing.*

[fol. 130a] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 131] DEFENDANTS' EXHIBIT NO. 9

IN UNITED STATES DISTRICT COURT

OPINION, McNAMEE, J.—March 23, 1953

The Court: Gentlemen, I have given careful attention to the arguments made here this morning and I have carefully read the briefs filed in this case. I have no desire to discuss the matters that were argued before the Court of Common Pleas and are resubmitted in argument and in the briefs filed in this case and copies of briefs filed in the Common Pleas Court.

As I stated in the memorandum written in connection with the motion to remand, I think the question whether unfair labor practice has been charged is a matter for the state court to decide. I am not going to presume to discuss the matters that are, in my opinion, exclusively within the province of the court in the Richman Brothers action.

The Congress of the United States has recognized that [fol. 132] only in extraordinary situations may the Federal Court stay the hand of State Courts. It has provided since 1948 in language that admits of no interpretation, in language that is as clear, and as explicit as it can possibly be, as follows: "A court of the United States may not grant injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or, where necessary, as an aid of its jurisdiction or to protect or effectuate its judgment."

It has not been suggested that there is any act of Congress applicable here that would authorize this Court to stay the proceedings in the Common Pleas Court, this being an action between private parties, an action in which the National Labor Relations Board is not a party and is not seeking to vindicate its jurisdiction. Nor has it been sug-

gested—except as counsel for defense argues—that this court has jurisdiction of this proceeding.

This Court has held in the motion to remand—in granting the motion to remand that this court did not have jurisdiction of the case filed by Richman Brothers originally in the Common Pleas Court, and certainly there is nothing that could aid a jurisdiction which is now existent.

Now, as I recall it, this action was originally filed by Richman Brothers sometime last October. Shortly after service was obtained, a motion was filed by the Defendant in the State Court to quash service. That motion was overruled and the case was scheduled for hearing. That is, the application for temporary injunction was scheduled for hearing sometime in the early part of November last year. Two or three days before the assigned hearing date, the case was removed to this court. And subsequently a motion was filed by the Plaintiff to remand this case to the Common Pleas Court. That motion was heard by this Court in the latter part of December of last year. In January of this year this Court remanded the case holding that it had been [fol. 133] improvidently removed and set forth in a memorandum the reason for such action.

After the case went back to the Common Pleas Court, the Defendants filed a motion to dismiss for want of jurisdiction and there was submitted to the Common Pleas Court all, substantially, if not all, of the arguments now urged upon this Court in support of the application to stay the proceedings in Common Pleas Court.

Common Pleas Court considered all of the arguments, made, all of the cases cited and overruled the motion to dismiss. Whereupon the plaintiff again—the defendant again came to this court, this time as plaintiff, seeking now to have this Court stay the proceedings in the Common Pleas Court. And as I have indicated, I find that the matters presented in this Court does not come within any of the stated exceptions of Section 2283 of Title 28.

Counsel for the Plaintiff in this action makes a very skillful argument. He argues that on the basis of a case decided in New York and on the basis of the *Capitol Service* case, in this Court—that there is a distinction which this court ought to notice and enjoin the state court from proceeding. But it is quite clear that in the New York case,

which I haven't read, that the relief sought was denied and it is quite clear from the statement of the case as made by counsel for the Plaintiff, that in that action the National Labor Relations Board was a party. That is also true in the *Capitol Service* case. And in the *Capitol Service* case it is unquestionable that the National Labor Relations Board was seeking to vindicate its exclusive jurisdiction.

I think it would be a novel proposition for a private individual to come into the Federal Courts and seek to vindicate the jurisdiction of the National Labor Relations Board when such jurisdiction had not been assumed or claimed by the National Labor Relations Board. It is with some reluctance that I forbear any discussion on the merits of the case or on [fol. 134] the other two branches of the argument. But as I say, I have no desire to invade the province of the Common Pleas Court.

The application for a stay of proceedings will be denied.

Certificate

I certify that the above and foregoing is a true and correct transcript.

Robert J. Kitchen.

Defendants' Exhibit No. 10

In United States District Court

Order Denying Application for a Stay of Proceedings

Upon oral hearing and consideration of the plaintiffs' application to stay the defendant from proceeding in the Common Pleas Court of Cuyahoga County, Ohio, it is ordered that said application be denied.

It is further ordered that leave be granted the defendant to file a motion to dismiss instanter.

Charles J. McNamee, United States District Judge.

[fol. 135] In United States District Court

Findings of Fact and Conclusions of Law in Connection With the Court's Order Denying Motion for Preliminary Injunction — March 24, 1953

Findings of Fact

1. The plaintiffs in this case are Amalgamated Clothing Workers of America, a labor organization, and Cleveland Joint Board of Amalgamated Clothing Workers of America, a labor organization affiliated with Amalgamated Clothing Workers of America. The defendant is The Richman Brothers Company, an Ohio corporation engaged in the business of making and selling men's clothing and of making and buying other articles of men's wear, its main factory and principal office and place of business being located at 1600 East 55th Street, Cleveland, Ohio.

2. On October 18, 1952, the defendant in this case, The Richman Brothers Company, filed an action in the Common Pleas Court of Cuyahoga County, Ohio, entitled *The Richman Brothers Company, Plaintiff*, vs. *Amalgamated Clothing Workers of America, et al., Defendants*, No. 641,936 on the docket of that court, in which the plaintiffs in this case, with other labor organizations and individuals, were made defendants, and in which The Richman Brothers Company, as plaintiff, prayed, pending final hearing of the case, for a temporary restraining order restraining the defendants, and all persons to whom knowledge of such order should come, from picketing, and from doing any and all acts to encourage picketing of, any of plaintiff's stores, and that upon final hearing the injunction be made permanent. Defendant's Exhibit 7 is a copy of the petition in that case. [fol. 136] 3. On November 7, 1952, the defendants in Case No. 641,936 on the docket of the Common Pleas Court of Cuyahoga County, Ohio, previously herein referred to, removed the case to this Court on the ground that the action was based upon a law of the United States, namely, the Labor Management Relations Act, 1947, 29 U. S. C. § 141 et seq. Defendant's Exhibit 1 is a copy of the petition for removal of the case to this Court. It was docketed in this Court as Civil Action No. 29,671.

4. On November 14, 1952, the defendants filed their answer in that case, Defendant's Exhibit 7a herein.

5. Thereafter, The Richman Brothers Company, plaintiff in that case, filed a motion in this Court to remand the case to the Common Pleas Court of Cuyahoga County, of which Defendant's Exhibit 2 is a copy, and, after oral argument held on December 19, 1952, and after consideration of briefs filed in connection therewith, this Court on January 7, 1952, entered its order, of which Defendant's Exhibit 3a is a copy, remanding the case to the Common Pleas Court of Cuyahoga County and its memorandum in connection with such order of which Defendant's Exhibit 3 is a copy.

6. On January 8, 1953, the defendants in that case filed an application for rehearing and reconsideration, of which Defendant's Exhibit 4 is a copy, which was overruled by order of this Court, of which Defendant's Exhibit 5a is a copy, on January 22, 1953.

7. As alleged in the complaint in this case, on January 28, 1953, the plaintiffs in this case filed a motion in the Common Pleas Court of Cuyahoga County, Ohio, in case No. 641,936 in that court, for an order dismissing the [fol. 137] petition in that case and striking the petition from the files for the reason that the Common Pleas Court of Cuyahoga County, Ohio, "has no jurisdiction to hear or to determine the claim set forth in the plaintiff's petition in that all of the labor conduct allegedly involved is within the field occupied by the Labor Management Relations Act of 1947 (29 U. S. C. A. § 151 et seq.) (an act of the United States Congress), and is preempted from and closed to State regulation," of which Defendant's Exhibit 6 is a copy.

8. After consideration of briefs and oral argument addressed to this motion, on March 12, 1953, the Common Pleas Court of Cuyahoga County, Ohio, entered its order, a copy of which appears in Defendant's Exhibit 8, treating the defendant's motion to dismiss the petition in that court as a demurrer on the ground that the court lacked jurisdiction of the subject matter of the action and overruling the demurrer.

9. Thereafter, on March 16, 1953, the present action, Civil Action No. 30,096 on the docket of this Court, was filed by the plaintiffs herein, in which the plaintiffs seek

to enjoin the defendant from further proceeding in the action in the Common Pleas Court on the grounds enumerated in the complaint, and for other similar relief on the same theory.

10. On March 23, 1953, the case came on for hearing on the motion for a stay pending hearing of the plaintiff's motion for a preliminary injunction and this Court, after consideration of oral argument and briefs, on March 23, 1953, entered its order, of which Defendant's Exhibit 10 is a copy, denying the stay and permitting the defendant to file a motion to dismiss the case instanter.

[fol. 138] 11. By consent of counsel the case was set for hearing on the motion for a preliminary injunction on March 24, 1953, and after consideration of the evidence, all of which was submitted by the defendant, consisting of Defendant's Exhibits 1 through 10, inclusive, and arguments of counsel, this Court, on March 24, 1953, entered its order denying a preliminary injunction in this case.

Conclusions of Law

1. This Court is prohibited by Title 28, U. S. C. § 2283 from issuing a preliminary injunction as prayed for, because there is no act of Congress which expressly authorizes the Court to issue such an injunction, there is no judgment of this Court which would be protected or effectuated by such a preliminary injunction, and it is not necessary in aid of the jurisdiction of the Court.

2. Therefore, the plaintiffs are not entitled to a preliminary injunction as prayed for in their complaint.

Charles J. McNamee, Judge.

March 24, 1953.

[fols. 139-140] In United States District Court

Order Denying Motion of Plaintiffs for Preliminary Injunction—March 25, 1953

This cause came on to be heard on the motion of the plaintiffs for a preliminary injunction and was duly heard upon the evidence and submitted to the Court; and the Court, having considered the same, finds and concludes

upon the findings of fact and conclusions of law filed herewith, that the plaintiffs are not entitled to a preliminary injunction as prayed for in their complaint.

It is, therefore, ordered that the motion of the plaintiffs for a preliminary injunction herein be and the same is hereby denied.

Charles J. McNamee, Judge.

March 25, 1953.

[fol. 150-152] IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUDGMENT—Filed March 30, 1954

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the motion to dismiss the appeal be and it is denied, and the order of the said District Court denying injunction is hereby affirmed.

[fol. 153] [File endorsement omitted]

In United States Court of Appeals for the Sixth Circuit

Amalgamated Clothing Workers of America and Cleveland Joint Board of the Amalgamated Clothing Workers of America, Appellants,

v.

The Richman Brothers Company, Appellee

No. 11893

Appeal from the United States District Court for the Northern District of Ohio, Eastern Division

Decided March 30, 1954

Opinion—Filed March 30, 1954

Before: Simons, Chief Judge; Allen and Miller, Circuit Judges.

Simons, Chief Judge. This appeal is from an order denying a motion for temporary injunction brought by appellants to enjoin appellee from proceeding in its suit before the Court of Common Pleas in Ohio. The ground for denial was that the court was without jurisdiction to entertain the suit because of the prohibition of 28 U. S. C. § 2283. The appellants' petition was based on the ground that the appellee's State court action constituted an invasion of the exclusive jurisdiction conferred by Congress upon the National Labor Relations Board. A motion to dismiss the appeal was referred by us to the oral hearing which has now been had. The appellant will be referred to herein as "the union" and the appellee as "Richman."

Richman is an Ohio corporation engaged in the manufacture and retail sale of wearing apparel in various states. The controversy was initiated by its suit in the State court for a temporary restraining order to prevent the union from picketing its stores, on the ground that the picketing was in furtherance of a conspiracy whose purpose was to exert economic pressure on Richman so that it would compel its

[fol. 154] employees to join the union. The suit was removed to the United States District Court, on the ground that the action was based upon an alleged unfair labor practice within the meaning of Section 8 (b)(1)(A) of the National Labor Relations Act. Richman moved to remand. The District Court granted its petition because it was, it said, without jurisdiction of the subject matter. The union filed, in the State court, a motion to dismiss on the ground that the matter complained of was within the exclusive jurisdiction of the National Labor Relations Board. Its motion was denied. The union then instituted an independent action in the District Court against Richman to enjoin it from prosecuting the remanded action and requested it to stay proceedings in the Ohio court pending determination of its application in the District Court for injunction. The court overruled the application for a stay and denied the granting of injunction. On the same day, hearings were begun in the State court resulting in the issuance of an injunction by the State court restraining the union from picketing the Richman stores. In the meanwhile, the union had noticed its appeal from the District Court's order.

Richman moved to dismiss the appeal on the ground that it constituted an attempt indirectly to obtain a review of the District Court's order of remand prohibited by Title 28 U. S. C. § 1447(d) which provides that such order "is not reviewable on appeal or otherwise." The union responds that the action is independent and in recognition of the finality of the remand order. This issue was not presented to or considered by the District Court which denied injunction solely on Title 28 § 2283. In view of what follows, we find no need for deciding it here.

There is also collaterally involved the question whether, under the facts as alleged in the Richman petition in the State court, Richman's grievance against the union is within the exclusive jurisdiction of the National Labor Relations Board, so that the State court is without jurisdiction to entertain it. In *Garner* v. *Teamsters, Chauffeurs, et al.*, 346 U. S. 485, decided December 14, 1953, it was held under comparable but not identical facts that the Supreme Court of Pennsylvania was right in dissolving an injunction against picketing issued out of a local court. It reasoned

that while the National Labor Management Relations Act leaves much to the states, Congress had refrained from saying how much. It said: "This is not an instance of injurious conduct which the National Labor Relations Board [fol. 155] is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' In such cases we have declined to find an implied exclusion of state powers. *International Union* v. *Wisconsin Board*, 336 U. S. 245, 254. Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, 749."

There is no suggestion in the Richman petition that violence or threats accompanied the union picketing. There is, however, an allegation of sporadic picketing demonstrations by as many as twenty pickets milling about in closely formed groups at the main entrance of the picketed stores, creating confusion and blocking the entrance so as to divert pedestrian traffic outwardly therefrom. Whether this distinction from the *Garner* case suggests an area for the exercise of State authority, we do not undertake to decide. The order of the State court granting the injunction is summary without findings of fact or conclusions of law and no record has been made available to us. We confine our consideration of the present case to the impact of Section 2283. That section provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

It will be observed that § 2283 provides three exclusions from its operations: 1) the injunction must be expressly authorized by Act of Congress, 2) it must be necessary in aid of the court's jurisdiction, 3) it must be designed to protect or effectuate the court's judgment. The union does not cite an Act of Congress which *expressly* authorizes stay of proceedings in a State court by a federal court in this type of case. *Boales* v. *Willingham*, 321 U. S. 503 and *Porter, Price Administrator* v. *Dicken*, 328 U. S. 252 held

that § 205 of the Price Control Act authorizes the Price Administrator to seek injunctive relief in appropriate courts, because that section is impliedly an amendment to § 265 of the Judicial Code, 28 U. S. C. § 379 which was predecessor to § 2283, *supra*. It is pointed out that Section 10(j) of the Labor Act, Title 29 U. S. C. § 160 provides that the National Labor Relations Board shall have the power, [fol. 156] upon issuance of a complaint charging an unfair labor practice, to petition a district court of the United States for appropriate temporary relief or a restraining order and that upon the filing of such petition the court shall have jurisdiction to grant such temporary relief or restraining order as it deems just and proper. So, it is argued that this section is so analogous to § 205 of the Price Control Act that it, too, is impliedly an amendment to the statute prohibiting injunctions to stay proceedings in the State courts.

There are a number of reasons why this argument fails. Neither the Price Control Act nor the Labor Act permits the granting of an injunction to persons generally. The authority granted in the Price Control Act is limited to the Price Administrator and for specific purposes and the authority in the Labor Act is limited to the Labor Board, but only for temporary restraint pending final adjudication of the Board with respect to the matter involved. This, necessarily, involves a proceeding in which the jurisdiction of the Board has been invoked. Here, what was sought was a permanent injunction and the jurisdiction of the Labor Board had not been invoked. This is made clear by subsection (1) of Section 10. Finally, § 2283, *supra*, in so far as it provides that a court of the United States may not grant an injunction to stay proceedings in a State Court, except as expressly authorized by Act of Congress, was not enacted into law until June 25, 1948. The *Dickson* case was decided in 1946, and *Boadle* in 1944. It is suggested in the revisor's note in 28 U. S. C. § 2283 that the provision limiting authority to enjoin to authority expressly granted was for the purpose of avoiding the decision in *Toucey* v. *New York Life Insurance Company*, 314 U. S. 118, which held that a federal court is without power to enjoin relitigation of cases already adjudicated. Whatever may be said of this inference, the limitation in § 2283 is clear, manda-

tory and completely free of ambiguity. It does not call for construction.

But were construction permissible, courts should not lightly read into the prohibitory enactment an implied amendment. This, we think, is the teaching of the *Toucey* case. There, the court traced the history of the prohibitory statute from its initial enactment in 1793 and said of it, p. 132: "The purpose and direction underlying the provision are manifest from its terms: proceedings in the State courts should be free from interference by federal injunction. The provision expresses on its face the duty of [fol. 157] 'hands-off' by the Federal courts in the use of the injunction to stay litigation in a State court. . . . In the course of 150 years, Congress has made few withdrawals from this sweeping prohibition:".

Finally, the principle has bearing, that in order to maintain respect for the mandates of courts, an injunctional order must be obeyed even if error lies in an assumption of validity of a seeming but void law. It is for the court, in the first instance, to determine the question of validity and until its decision is reversed for error by orderly review, either by itself or by a higher court, orders based on its decision are to be respected. *Howat* v. *Kansas*, 107 Kan. 423, 109 Kan. 376. The reasoning of that case was approved in *Howat* v. *Kansas*, 258 U. S. 181, 189, wherein Mr. Chief Justice Taft, speaking for a unanimous court, said: "It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected." This reasoning was cited and approved recently in *United States* v. *United Mine Workers of America*, 330 U. S. 258, 293. We are advised that the injunction has now been issued by the State court. Neither the District Court nor this court is invested with general power to review the decisions of State courts. This case involving a federal question, the appropriate course was to test the merits of appellants' grievance by appeal to the court of last resort in the state and from there to the Supreme Court of the United States. This was the road which the *Garner* case took.

The appellants urge, however, that such course would

have made for delay and that time was important to them. How valid that is we are unable to say but the care which Federal courts have taken from earliest times to avoid conflicts with State courts might well have counseled taking the longer path.

We come then to the phrasing of § 2283 which permits restraint of State judicial action where necessary in aid of the jurisdiction or to protect or effectuate the judgment of the Federal court. The appellants urge that this exclusionary language is broad enough to vest in the District Court authority to enjoin State action, not only to protect its own jurisdiction but also the exclusive jurisdiction of a federal agency. At least, one court has so held. *NLRB* v. *New York State Labor Relations Board*, 106 Fed. Sup. 749, D. C. N. Y. In that case, however, the Board's jurisdiction had been invoked and it had power expressly vested in it [fol. 158] to bring an action in the District Court to enjoin a State Labor Relations Board from invading its exclusive jurisdiction pendente lite. In *Capital Service, Inc.* v. *National Labor Relations Board*, 204 Fed. (2d) 884 (9th Cir.), the Supreme Court granted certiorari upon this question submitted by the court: "In view of the fact that exclusive jurisdiction over the subject matter was in the National Labor Relations Board, *Garner* v. *Teamsters, Chauffeurs and Helpers, Local Union No. 776, (AFL), et al.*, No. 56, October Term 1953, decided December 14, 1953, could the Federal District Court, on application of the Board, enjoin petitioners from enforcing an injunction already obtained from the State court." Affirmative answer to that question will not conclusively decide this case for, there, there was an application by the Board itself to protect its jurisdiction, already invoked and pending decision. Here, no such situation exists.

In *Meyers* v. *Bethlehem Ship Building Corporation*, 303 U. S. 41, the question was whether a Federal District Court had equity jurisdiction to enjoin the National Labor Relations Board from holding a hearing on a complaint filed by it against an employer alleged to be engaged in unfair labor practice. The answer to that question was that the District Court had no such jurisdiction. It was pointed out that exclusive initial jurisdiction arising under the Labor Management Relations Act is vested in the Board

and the District Court has no jurisdiction to entertain actions based thereon or growing thereout. In the *Garner* case, *supra*, it was said: "The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the Federal Board, precludes State courts from doing so," citing the *Meyers* case, *supra*, and *Amalgamated Utility Workers* v. *Consolidated Edison Company*, 309 U. S. 261. In a foot-note, it cites *International Union* v. *William D. Baker Company*, 100 Fed. Supp. 773, as illustrating the potentialities of conflict, and noting that the federal court in that case had held that even if exclusive jurisdiction over the subject matter was in the federal court, it had no power to enjoin enforcement of the State injunction. For critical comment on *Baker*, see note 48 N. W. U. L. Rev. 383.

Another explanation by the appellants for taking the course they did, rather than by orderly review, is based on the assertion that while Richman charged an unfair labor practice, the union had no basis for invoking the jurisdiction of the Labor Board and the Labor Board had consistently declined to undertake any proceeding [fol. 159] without a formal charge being lodged with it. But the Board has held in *W. T. Carter & Brother*, 90 N. L. R. B. No. 257, that the utilization of State judicial machinery for the purpose of blocking communication between union organizers and employees infringes organizational rights and is itself an unfair labor practice, over which it has jurisdiction. The union so charged in the *Carter* case and the Board, in its order, directed the employer to obtain vacation of the State court decree. (For comment on the *Carter* case, see 64 Harvard Law Rev. 507 [1951].) If time be of the essence, this approach could have settled at an early stage the question whether the Board would exercise its discretion to act, as well as other questions involved, and would have avoided the difficulties presented in the conflict of Federal and State jurisdiction. Perhaps, it is not too late to employ the mechanics of the *Carter* case. Upon this, we express no opinion.

Our conclusion is that § 2283, *supra*, did not vest in the court below jurisdiction over the union's petition for an injunction against State action, in the circumstances of

the present case. The motion to dismiss the appeal is denied but the order denying injunction is

Affirmed.

[fols. 160-161] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 162] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 173

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.